

**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT****MUR: 6033****DATE COMPLAINT FILED: July 2, 2008****DATE OF NOTIFICATION: July 10, 2008****LAST RESPONSE RECEIVED: August 28, 2008****DATE ACTIVATED: September 16, 2008**

**EXPIRATION OF SOL: April 30, 2013/  
June 3, 2013**

**COMPLAINANT:**

**Doug Kelly, Executive Director of the Ohio  
Democratic Party**

**RESPONDENTS:**

**Ohio Bankers League  
Daniel Conklin  
Stivers for Congress and Wade Steen, in his official  
capacity as treasurer**

**RELEVANT STATUTES  
AND REGULATIONS:**

**2 U.S.C. § 441b(a)  
11 C.F.R. § 110.6(b)(2)  
11 C.F.R. § 114.2(f)  
11 C.F.R. § 114.3(c)(2)(ii)**

**INTERNAL REPORTS CHECKED: Disclosure Reports****FEDERAL AGENCIES CHECKED: None****I. INTRODUCTION**

**This matter originated with a complaint filed by Doug Kelly, alleging that the Ohio Bankers League ("the OBL"), Daniel Conklin (an OBL employee), and Stivers for Congress and Wade Steen, in his official capacity as treasurer ("Stivers Committee" or "Committee") violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations in conjunction with prohibited earmarked contributions solicited by the OBL for the Stivers Committee. The OBL is a trade association for financial**

1 institutions that conduct business in Ohio and a non-profit corporation under Ohio law. Daniel  
2 Conklin is listed on the Statement of Organization for the Ohio Bankers League Political Action  
3 Committee ("the OBL PAC"), a separate segregated fund of the OBL, as custodian of records  
4 with the title of "PAC Specialist." Steve Stivers was a candidate in the 2008 election for the 15<sup>th</sup>  
5 Congressional District of Ohio; Stivers for Congress is his principal campaign committee.

6 Based on the available information, it appears that no corporate resources were used to  
7 facilitate contributions and that the OBL did not act as a conduit for contributions to the Stivers  
8 Committee. Accordingly, we recommend that the Commission find no reason to believe that the  
9 Ohio Bankers League, Daniel Conklin, or Stivers for Congress and Wade Steen, in his official  
10 capacity as treasurer, violated 2 U.S.C. § 441b(a).

11 **II. FACTUAL SUMMARY**

12 The complaint's allegations are based on a fundraising invitation that states, "Please join  
13 the OBL for an evening with State Senator Steve Stivers Republican Candidate for Congress,"  
14 and that the fundraising reception is "conducted in conjunction with the OBL CEO Symposium."  
15 See Attachment 1. The solicitation states that it is "Paid for by Stivers for Congress" and that  
16 checks should be made payable to Stivers for Congress. The solicitation directs recipients to  
17 return the enclosed response form and contributions to "Dan Conklin, Ohio Bankers League,  
18 4249 Easton Way, Suite 150, Columbus, Ohio 43219." The complaint contends that these facts  
19 establish that earmarked contributions were directed by the Respondents to the corporate  
20 headquarters of the OBL and to the attention of a corporate representative, Daniel Conklin, in  
21 violation of the Act and Commission regulations. Complaint at 4.

22 The OBL's response on behalf of the organization and Daniel Conklin explains that the  
23 invitation was not sent by the OBL itself, but instead sent by the OBL PAC to members of its

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1 restricted class to advise members that they could send contribution checks to an officer of the  
2 OBL PAC for delivery to the Stivers Committee. OBL Response at 2. The affidavit of Jeffrey  
3 D. Quayle, Senior Vice President and General Counsel of OBL and the Treasurer of the OBL  
4 PAC, provides the basis for the OBL's response. The affidavit states that Sherran Blair, a former  
5 Chairwoman of the OBL, and her husband volunteered to host a small fundraising event for the  
6 Stivers campaign in their home on June 3, 2008. Quayle Affidavit (Exhibit 1 in OBL's response)  
7 ¶ 4. According to Quayle, the OBL PAC agreed to print and mail invitations to the event with  
8 the understanding that the printing and mailing costs would be paid by the Stivers Committee.  
9 *Id.* Mr. Quayle prepared the draft of the invitation, which, in retrospect, he concedes should  
10 have been more clearly worded to state that it was from the OBL PAC. Quayle Affidavit ¶ 5.  
11 He also concedes that the invitation failed to clarify that the contributions were to be sent to Mr.  
12 Conklin in his capacity as an officer of the OBL PAC. The Stivers Committee reviewed and  
13 approved the draft without raising any concerns about the text. *Id.*

14 The affidavit further explains that the invitations were mailed to members of the OBL's  
15 restricted class on April 30 and May 1, 2008. See Quayle Affidavit ¶ 6. As a service to the  
16 members who did not attend the event, the OBL PAC offered to serve as a conduit for  
17 contributions to the Stivers Committee. *Id.* A response submitted by the Stivers Committee  
18 states that Conklin and other OBL employees received approximately 10-11 checks of \$250  
19 payable to the Stivers Committee prior to the event. Committee Response at 2. After obtaining  
20 a copy of the invitation on the day of the Blair event, the Ohio Democratic Party publicly  
21 claimed that the Blair invitation demonstrated that the OBL had made a prohibited corporate  
22 contribution to the Stivers Committee. Quayle Affidavit ¶ 7. Thereafter, the OBL PAC, "in an  
23 abundance of caution," opted to forgo its right to act as a conduit for contributions to the Stivers

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1 Committee and instead returned the contribution checks to the original contributors and informed  
2 them to deliver the checks to the Committee themselves. A representative of the Stivers  
3 Committee attended the Blair event and collected all checks. Burchard Affidavit (Attachment to  
4 Committee Response) ¶ 4. Thus, the OBL and the OBL PAC did not deliver any checks from  
5 members of the restricted class to the Stivers Committee. Quayle Affidavit ¶ 8; Committee  
6 Response at 2.

7 The Blair event took place as planned and the Blairs informed the Stivers Committee that  
8 food and beverages for the event cost \$475, and the Committee reported that amount as an in-  
9 kind contribution.<sup>1</sup> The OBL PAC received a check for the cost of printing and mailing the  
10 invitations to the event (\$811) from Stivers for Congress on July 14 or 15, 2008, a copy of which  
11 was attached to the OBL's response. Quayle Affidavit ¶ 8; OBL Response Exhibit 2. An  
12 invoice for the printing and mailing costs is attached to the Committee response. The event  
13 raised approximately \$15,000 for the Stivers Committee. Committee Response at 2.

### 14 **III. LEGAL ANALYSIS**

15 The complaint alleges that the OBL, as a corporate entity, solicited prohibited earmarked  
16 contributions for the Stivers Committee. Under the Act, corporations are prohibited from  
17 making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a).  
18 Corporations are also prohibited from using corporate resources to facilitate the making of  
19 contributions to federal candidates or political committees other than through the corporation's  
20 separate segregated fund. 11 C.F.R. § 114.2(f)(1). This prohibition extends to earmarked or  
21 directed contributions when corporations and their officers, directors or other representatives,

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<sup>1</sup> When holding a campaign-related activity in his or her home, an individual may spend up to \$1,000 per candidate, per election, for food, beverage and invitations for the event without making a contribution. A husband and wife may together spend up to \$2,000 per candidate per election. Any amount spent in excess must be reported by the campaign as an in-kind contribution. 2 U.S.C. § 431(8)(B)(ii); 11 C.F.R. § 100.77.

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1 acting as agents, facilitate contributions by using corporate or labor resources to engage in  
2 fundraising activities. *Id.* An earmarked contribution is one which the contributor directs (either  
3 orally or in writing) to, or spends on behalf of, a clearly identified candidate or candidate's  
4 committee through an intermediary or conduit. 11 C.F.R. § 110.6(b)(1). A corporation  
5 prohibited from making contributions in connection with federal elections may not act as a  
6 conduit for an earmarked contribution, nor may an individual acting as a representative of that  
7 corporation receive such contributions. 11 C.F.R. §§ 110.6(b)(2)(ii), (b)(2)(i)(A) and (E).  
8 Accordingly, the Act prohibits the OBL from using corporate resources in order to solicit and  
9 forward earmarked contributions for the Stivers Committee.

10 The solicitation in this matter only references the OBL. While averring that the  
11 solicitation was intended to be from the PAC, Jeffrey Quayle, its author, acknowledges that the  
12 wording could have more clearly indicated that the solicitation was from the OBL PAC rather  
13 than the OBL. However, the complaint does not allege that the solicitation was directed at  
14 individuals outside of the OBL's restricted class, nor is there any indication of any corporate  
15 involvement in collecting the earmarked contributions. Both Jeffrey Quayle and Daniel Conklin,  
16 the recipient of the earmarked contributions, held official positions in the OBL PAC. Thus, the  
17 available information indicates that the OBL did not use corporate resources to facilitate the  
18 making of contributions to the Stivers Committee.

19 Unlike a corporation, a separate segregated fund may act as a conduit for an earmarked  
20 contribution. 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.3(c)(2)(ii). The Commission's regulations  
21 specifically exempt from the definition of prohibited corporate facilitation the solicitation of  
22 contributions to a candidate or political committee by a separate segregated fund, and the  
23 collection and forwarding of contributions earmarked to a candidate by a separate segregated

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1 fund. 11 C.F.R. § 114.2(f)(3)(i) and (ii). Additionally, prohibited corporate facilitation does not  
2 include a corporation soliciting contributions to be sent directly to candidates if the solicitation is  
3 directed to the restricted class, nor does it include a corporation soliciting earmarked  
4 contributions for a candidate that are to be forwarded by the corporation's separate segregated  
5 fund, to the extent that such contributions are also treated as contributions to and by the separate  
6 segregated fund. 11 C.F.R. § 114.2(f)(4)(ii) and (iii). Thus, the OBL, as a corporation, would  
7 have been permitted to solicit contributions earmarked for the Stivers Committee to be  
8 forwarded by the OBL PAC, its separate segregated fund, to the extent that the contributions  
9 were treated as contributions to and by the OBL PAC. The OBL's response indicates that the  
10 OBL PAC, not the OBL itself, originally intended to act as a conduit for the earmarked  
11 contributions had the contributions not been returned to the original contributors.

12 Consequently, this matter differs from other matters where the Commission has found  
13 reason to believe that corporations violated the Act in connection with corporate facilitation and  
14 solicitation of earmarked contributions. In MUR 5749, the Commission found reason to believe  
15 that GSP Consulting Corporation violated 2 U.S.C. § 441b by soliciting contributions outside of  
16 its restricted class that were to be collected and forwarded by its separate segregated fund, but  
17 not treated as contributions to and by the separate segregated fund, and, after an investigation,  
18 determined to enter into pre-probable cause conciliation. MUR 5749 Commission Certification,  
19 dated October 9, 2008. In that case, our investigation showed that a GSP principal who had no  
20 official position with GSP PAC, the corporation's separate segregated fund, sent an internal e-  
21 mail to GSP employees stating that the corporation was hosting a fundraiser for Congressman  
22 Murphy and asking for their assistance in soliciting contributions from clients and others outside  
23 of the restricted class. He also personally sent invitations to GSP clients outside of the restricted

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1 class, stating that "GSP would like you to join us..." at the fundraiser and soliciting  
2 contributions. The event raised \$2,300 in earmarked contributions that were collected and  
3 forwarded to the Murphy campaign through GSP PAC; GSP did not treat those contributions as  
4 contributions to and by the PAC. *See* MUR 5749 General Counsel's Report #2 at 6. *See also*  
5 MUR 5573 (Westar) (Commission found reason to believe that Westar, a public corporation,  
6 violated the Act by facilitating contributions and acting as a conduit for prohibited earmarked  
7 contributions).

8 In the present matter, contributions were not solicited outside of OBL's restricted class.  
9 Further, although the solicitation directs recipients to return contributions to Daniel Conklin at  
10 the OBL, Conklin held an official position with the OBL PAC and is listed as "PAC Specialist"  
11 on the OBL PAC's Statement of Organization. Moreover, the 2008 July Quarterly Reports filed  
12 by the OBL PAC and the Stivers Committee did not disclose any contributions that appeared to  
13 be forwarded from the OBL PAC to the Committee and sworn affidavits in both responses state  
14 that the OBL, OBL PAC, and Daniel Conklin did not act as conduits for any contributions to  
15 Stivers for Congress. Rather, the PAC returned all contributions received before the event to the  
16 contributors, and a Committee representative collected all of the checks at the event. The  
17 Commission's regulations require a person who is prohibited from acting as a conduit to return  
18 the earmarked contribution to the contributor. 11 C.F.R. § 110.6(b)(2)(iii)(B). Thus, even if the  
19 earmarked contributions had been prohibited under the Act, the remedy would have been for the  
20 contributions to be returned. By proactively returning the contributions to the contributors, the  
21 OBL PAC acted in accordance with the Commission's regulations, thus avoiding any possible  
22 violations. Accordingly, we recommend that the Commission find no reason to believe that the

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Ohio Bankers League, Daniel Conklin, or Stivers for Congress and Wade Steen, in his official capacity as treasurer, violated 2 U.S.C § 441b(a).

**IV. RECOMMENDATIONS**

1. Find no reason to believe that the Ohio Bankers League violated 2 U.S.C. § 441b(a).
2. Find no reason to believe that Daniel Conklin violated 2 U.S.C. § 441b(a).
3. Find no reason to believe that Stivers for Congress and Wade Steen, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a).
4. Approve the attached Factual and Legal Analyses.
5. Close the file.
6. Approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

December 15, 2008  
Date

BY:

Susan L. Lebeaux  
Susan Lebeaux  
Acting Deputy Associate General Counsel  
for Enforcement

Mark Allen  
Mark Allen  
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Attorney

**Attachments:**

1. OBL Solicitation



Please join the OBL for an evening with State Senator  
Steve Stivers Republican Candidate for Congress

Tuesday, June 3, 6 - 8 p.m

Conducted in conjunction with the OBL CEO Symposium,  
the reception will be held at the home of Roger and Sherran  
Blair, former OBL Chairwoman.

4670 Tensweep Road, New Albany, Ohio

Suggested contribution \$250 per person  
Please make check(s) payable to "Stivers for Congress"

- ☐ Yes, I will attend Enclosed is my contribution of \$\_\_\_\_\_
- ☐ No, I will not be able to attend, but enclosed is my contribution of \$\_\_\_\_\_
- ☐ No, I will not be able to attend

Name \_\_\_\_\_

Home Address \_\_\_\_\_

Financial Institution \_\_\_\_\_

Business Address \_\_\_\_\_

Business Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

Federal law requires political committees to use their best efforts to obtain and report the name, mailing address, occupation and employer for each individual whose contributions aggregate in excess of \$200 in an election cycle. Contributions to Stivers for Congress are not deductible as charitable donations for federal income tax purposes. Contributions from foreign nationals and corporations are prohibited.